

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARCUS MIDDLEBROOK,

Plaintiff,

Hon. Gordon J. Quist

v.

Case No. 1:10-CV-526

CINDI CURTIN, et al.,

Defendants.

REPORT AND RECOMMENDATION

Plaintiff initiated this action on June 3, 2010, against: (1) Cindi Curtin, (2) Maryellen McDonald, and (3) an unidentified mailroom supervisor. Plaintiff's claims against Defendants Curtin and McDonald have since been dismissed. In the more than sixteen months since this matter was initiated, Plaintiff has neither requested an extension of time to effect service on this Unknown Party nor has he requested the Court's assistance in identifying this individual or effecting service thereon. Accordingly, pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Plaintiff's claims against the unidentified defendant be dismissed for failure to timely effect service and this matter terminated.

Federal Rule of Civil Procedure 4(c) indicates that "[a] summons must be served together with a copy of the complaint." The time frame within which service must be effected is articulated in Rule 4(m), which provides that if service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, "the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time." If the plaintiff demonstrates good cause for such failure, however, the court

“must extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m). Considering Plaintiff’s lack of diligence, the Court recommends that Plaintiff’s claims against the unidentified mailroom supervisor be dismissed without prejudice for failure to timely effect service and this matter terminated.

CONCLUSION

For the reasons articulated herein, the undersigned recommends that Plaintiff’s claims against the unidentified mailroom supervisor (a.k.a. Unknown Party) be dismissed without prejudice for failure to timely effect service and this matter terminated.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court’s order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Date: November 29, 2011

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge